

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

**Case Nos. 10-C-652
07-CR-5**

COURTNEY WAINWRIGHT,

Movant.

DECISION AND ORDER

After a jury trial, Courtney Wainwright was convicted of conspiracy to distribute 100 grams or more of heroin and sentenced to 168 months in prison. The Seventh Circuit affirmed in an unpublished opinion. *United States v. Wainwright*, 334 F. App'x 762 (7th Cir. 2009). Wainwright now moves for relief under 28 U.S.C. § 2255.

Wainwright presents one ground for relief in his motion: that his attorney was ineffective for failing to argue at sentencing that the greatest amount of heroin that could have been involved in the offense was 625 grams. Based on testimony from Wainwright's heroin supplier, Kazeem Afolabi, the Court found that Wainwright was responsible for 700 grams to 1 kilogram of heroin, which resulted in a guideline range of 135 to 168 months. Wainwright argues that he only could have been responsible for 625 grams because the guideline calculation in Afolabi's guilty plea was based upon a drug weight of 700 to 1,000 grams, and according to a police interview, Afolabi sold 375 grams to Gregory Jackson,

another co-conspirator (1,000 - 375 = 625). These are all estimates, and in Wainwright's case, the government established, by a preponderance of the evidence, that he was responsible for 700 to 1,000 grams of heroin. *United States v. Johnson*, 342 F.3d 731, 734 (7th Cir. 2003). That Afolabi pleaded guilty to the same amount does not preclude the possibility that there was more heroin involved in these transactions. Counsel's failure to raise this argument was not ineffective assistance because it was a losing argument. *Stone v. Farley*, 86 F.3d 712, 717 (7th Cir. 1996).

Therefore, Wainwright's motion [ECF No. 1] is **DENIED**. The Court will not issue a certificate of appealability. Rule 11(a), Rules Governing Section 2255 Cases. The Clerk of Court is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 14th day of February, 2013.

BY THE COURT:



HON. RUDOLPH T. RANDA
U.S. District Judge